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ADMITTED NY

September 12, 2021

BY ECF

The Honorable William F. Kuntz II
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. Elder, et al.*, 18 Cr. 92 (WFK)

Your Honor:

Defendant Wilbert Bryant respectfully submits this reply to the Government's September 11, 2021 response to defendants' September 10, 2021 submission regarding precluding unvaccinated jurors from the empaneled jury. *See* Doc. No. 343. Bryant corrects misstatements in the Government's letter and highlights additional authority supporting defendants' position.

The Government incorrectly argues "defendants have only cited national statistics about racial groups' vaccination status, not those within the Eastern District of New York." *See* Government's Sept. 11, 2021 letter at p. 7. The Government further claims "vaccination rates within New York City do not appear to be as racially disparate," which is similarly not true. *Id.* Bryant's September 2, 2021 letter cited New York statistics indicating 54% of the White population is vaccinated, but only 41% of the total Black population is vaccinated. *See* Doc. No. 324, at p. 2, fn. 6. And the New York City statistics pointed out by the Government also highlight this disparity with only 36% of Blacks in Brooklyn, Queens and Staten Island being fully vaccinated, as compared to 41%, 46% and 45% of Whites; 77%, 76% and 73% of Asians; and 47%, 57% and 43% of Hispanics in these boroughs being fully vaccinated.¹ This disparity is particularly relevant because Bryant is African American.

Bryant also respectfully directs the Court's attention to two persuasive sources supporting defendants' position. The Administrative Office of the United States Courts² has made clear that being vaccinated is not a legal qualification for service on a jury as a spokesperson stated, "While courts may ask jurors COVID-19-related questions as part of their safety protocols, providing litigants with a jury selected at random from a fair cross section of the community

¹COVID-19: Data," N.Y.C. Health, available at <https://www1.nyc.gov/site/doh/covid/covid-19-data-vaccines.page#nyc> (last visited Sept. 12, 2021).

²<https://www.uscourts.gov/about-federal-courts/judicial-administration>.

remains of greatest importance.”³ And the National Center for State Courts, an organization dedicated to promoting the rule of law and improving the administration of justice in state courts, explained that “[a]long with the coronavirus’ differential impact on people of color, public health experts have noted ongoing challenges in making vaccine distribution accessible to these communities, including higher rates of vaccine hesitancy in these communities. *Excluding persons who are not fully vaccinated may make the jury pool less likely to reflect a fair cross section of the community, which in turn may also increase the risk of jury challenges.*”⁴

We also point out that a vaccine requirement also prevents a fair cross section of the community because of the imbalance in vaccination rates based on religious beliefs, political affiliation, income level, age, and even gender.⁵

Finally, the Government states that it expects to call approximately 40 witnesses in its case-in-chief, but it appears their vaccination status is a non-issue to their participating in the trial. This also seems to be the case regarding the other participants it mentions in its letter (e.g. United States Marshals, Court staff and reporters). Respectfully, these dissimilar approaches to different trial participants further undercuts the decision to preclude the unvaccinated from the jury.

Respectfully,

s/Michael Hueston
Eylan Schulman
Counsel for Wilbert Bryant

³*Next Pre-Trial Question for Jurors: Are You Vaccinated?*, Bloomberg Law, May 28, 2021, <https://news.bloomberglaw.com/us-law-week/next-pre-trial-question-for-jurors-are-you-vaccinated>.

⁴Considerations about Collecting Information on COVID-19 Vaccine Status from Prospective Jurors, A Pandemic Resource from NCSC, National Center for State Courts, May 4, 2021, Version #1, https://www.ncsc.org/__data/assets/pdf_file/0027/64296/COVID-19-Vaccine-Considerations.pdf (*emphasis added*).

⁵A March 2021 Pew Research Center report highlighted disparities in vaccine rates between Democrats and Republicans, those 65 and older and young adults, lower-income and middle and upper-income, and men and women. *Pew Research Center*, <https://www.pewresearch.org/science/2021/03/05/growing-share-of-americans-say-they-plan-to-get-a-covid-19-vaccine-or-already-have/>; see e.g., *Covid Vaccine Resisters Seek Religious Exemption: But What Counts As Religious?*, New York Times, Sept. 11, 2021, available at <https://www.nytimes.com/2021/09/11/us/covid-vaccine-religion-exemption.html>.